HEARING BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: "A MILLION LITTLE PIECES" LITIGATION

Docket No. 1771

Kansas City, Kansas

May 26, 2006

BEFORE THE HONORABLES JUDGE HANSEN, JUDGE MILLER, JUDGE JENSEN, JUDGE HODGES, JUDGE KEENAN, JUDGE MOTZ, and JUDGE VRATIL, JUDICIAL PANEL.

APPEARANCES:

Mr. Mark B. Blocker, Esq.
For: Random House, Inc. and
Doubleday, Inc.
Sidley Austin LLP
Chicago, IL

Mr. Evan Smith, Esq.
For: Michele Snow
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Mr. John H. Alexander, Esq.
For: Marcia Vedral
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JUDGE HODGES: Next case is MDL 1771 designated as the Million Little Pieces litigation. Here we have ten cases pending and at least five different districts. And the defendant has moved for centralization. And first to be heard in support of the motion, I believe, Mr. Blocker.

MR. BLOCKER: Good morning, Your Honors. I'm Mark Blocker and I represent defendants Random House and Doubleday who are the publishers and marketers of a book that's at issue. The author's lawyer, Rick Myers, is also in court today. I'm going to be speaking on his behalf as well.

There is a surprising degree of consent among the parties about what needs to be done with these cases. The parties agree these cases should be centralized in a single location and they agree they should be sent to one of two locations, either to Judge Keenan's home district of the Southern District of New York or to the Northern District of Illinois in Chicago.

I'm going to explain to Your Honor why we think it is more appropriate for these cases to go to the Southern District of New York; although, if you aren't going to send them there, we agree that the Northern District of Illinois is an appropriate alternative forum.

This Court has recognized on many occasions the case should be transferred to the district that has the most significant nexus to the dispute and it has also recognized that a significant nexus usually exists where the defendants are located and where they are corporations where the corporations have their principal place of business.

This Court's also recognized that where many relevant documents and witnesses are located --

JUDGE MOTZ: I don't want to get in the merits. Are you planning to have a lot of discovery in this case on the front end trying to resolve the claims? I mean, is the location of documents and witnesses in this case going to be, from your point of view, necessarily relevant?

MR. BLOCKER: It will be, Your Honor, if we get beyond the motion to dismiss, it will be very relevant because the book --

JUDGE MOTZ: If you get beyond it. I assume you intend to file a motion.

MR. BLOCKER: Absolutely.

JUDGE KEENAN: Have you moved yet to have either Judge --

MR. BLOCKER: No, we have not, Your Honor. Judge Keenan, we have asked for stays in all the jurisdictions where we had cases pending, so that none of the cases got out in front of the other, we could create an MDL before we had separately litigated each of the cases. But --

JUDGE KEENAN: You didn't answer either.

MR. BLOCKER: We have not answered either. We moved for stays and got stays by agreement everywhere except one case in which we moved for stay and was successful.

But here the answer to Your Honor's question, Judge Motz, discovery will be important if we get beyond the discovery phase or if we get beyond the motion to dismiss phase because the book has a number of people in it that are characters. And presumably the plaintiffs will want to take discovery to determine if the plaintiffs -- if the characters in the book represent real, live individuals which is the basis for their claim.

With respect to --

JUDGE MOTZ: Is there going to be discovery about damages? And that wouldn't be very --

MR. BLOCKER: Well, there may be discovery about damages; although, the records as to damages, Your Honor, will all be at Random House headquarters in New York to the extent they exist.

Random House is located in New York, and Doubleday is located in New York, and the author James Frey, they're all located in New York. So if there's a prototypical case that has a substantial nexus, it seems to be, Your Honor, the Southern District of New York.

I see that I'm out of time, so thank you, Your Honors.

JUDGE HODGES: Thank you, Mr. Blocker.

Next to be heard is Mr. Smith representing the plaintiff in the New York action.

MR. SMITH: Good morning, Your Honors. Evan Smith on behalf of the plaintiff, Michele Snow, first filed action in the Southern District of New York.

JUDGE HODGES: What relief do you request in your Complaint, Mr. Smith? My curiosity overwhelms me.

MR. SMITH: Well, Your Honor, in our particular Complaint, as opposed to some other Complaints, our particular Complaint alleges reimbursement of the costs of the book. And on behalf of all plaintiffs in the state of New Jersey, specifically our plaintiff.

JUDGE KEENAN: This is a diversity case, right?

MR. SMITH: It is, Your Honor.

JUDGE KEENAN: Again, not to get into the merits, but are there damages of over $75,000 here?

MR. SMITH: On behalf of the classes, there are.

Well, with respect to the transfer to an appropriate jurisdiction, while I often don't agree, generally speaking, with defense counsel on anything except settlement, I do agree with Mr. Blocker in the defendants' motion to transfer to the Southern District of New York.

In particular, I just note that the Illinois people seek to have a transfer to Judge Grady who already has three MDLs pending. And Judge Holwel in Southern District of New York does not have any.

Also defendants -- the plaintiffs say that the counsel wish for -- I'm sorry, the Illinois groups says in their papers that the defendants' counsel are in Illinois, but that is totally taken out of context because defense counsel seek for it to be in Southern District of New York.

And, finally, the punitive class where most defendants are target defendants are in New York. The fact that some plaintiffs may have to travel from Washington or California or Ohio to Illinois or New York shouldn't really matter.

JUDGE MOTZ: The damages -- your theory is you just want reimbursement. Wouldn't that depend upon the law of various states? Wouldn't it depend upon depositions of each individual plaintiff as to whether or not, you know, they really -- although they thought they were buying the work of nonfiction, as a work of fiction, and they still have some value for it?

I mean, I'm not sure how this is -- does not become a very individualized determination in determining based upon the law of damages of a particular state.

MR. SMITH: Well, Your Honor, there's various issues that will be addressed in the motion to dismiss which will be fully briefed at that point. I mean --

JUDGE MOTZ: Wouldn't it make sense, perhaps, to have -- you know, just to have the case mature a little bit by having some rulings on motions to dismiss before deciding whether there should be centralization?

MR. SMITH: We didn't file the motion. The defendants did. We were in the Southern District of New York. And we really --

JUDGE MOTZ: So you'd just assume not have centralization.

MR. SMITH: No. I submitted papers. We agree that there should be centralization.

Thank you.

JUDGE HODGES: All right. Thank you.

Next to be heard is Mr. Alexander representing plaintiff in Illinois seeking transfer there.

MR. ALEXANDER: Good morning, Your Honors.

I just want to add something. We were removed to Federal District Court, so we were seeking our class action in the state of Illinois. So we're not the ones who brought this case before the Federal Court.

I am here on behalf --

JUDGE MOTZ: But you did move it --

MR. ALEXANDER: Well, we're here now. Somebody brought us.

I'm here on behalf of the plaintiffs in the

Northern District of Illinois and also the Southern District of Ohio. I represent the plaintiff Vedral.

Basically, we believe that the Northern District of Illinois is the most appropriate forum --

JUDGE KEENAN: What about the fact, as has been pointed out, Judge Grady already has three MDLs?

MR. ALEXANDER: Well, my answer to that is that New York has 37 MDLs and Illinois has a total of 12 MDLs.

JUDGE KEENAN: We're talking about individual judges. What you're saying is send it to Illinois, but don't send it to Judge Grady?

MR. ALEXANDER: I believe Judge Grady could handle it. Also another judge in Illinois in the Northern District could handle it. Basically, as counsel said earlier in another case here, Illinois -- the Northern District of Illinois has the lowest per case load per judge. So I believe that Illinois is, relatively and comparatively to New York, under worked as far as MDL cases.

I do believe Judge Grady is fully competent and capable and I don't think he's overwhelmed, but

I do believe that another judge also in the Northern District of Illinois could handle this. New York has three times -- more than three times what the Northern District of Illinois has.

And Your Honors, basically, of the 13 cases filed, nine of them are Midwest and West Coast cases. Four of them in Illinois, one in Ohio, one in Michigan, two in California, one in Seattle. The rest -- four of them are in New York.

Chicago is, as we all know, very centrally located. The West Coast counsel would need about five hours to get to New York on every matter that was required. New York counsel would need about two hours to get to Chicago.

As earlier pointed out, defendants' main counsel, Mr. Blocker, even though he wants to be in New York, his offices are in Chicago. Many of the fact witnesses are largely distributed in the Midwest. Minnesota, for example, is where the Hazelton drug rehab clinic was. Many members of various book clubs. Basically Frey is from Ohio.

So the point is that we believe that Chicago is the most appropriate forum for this matter. Thank you.

JUDGE HODGES: All right. Thank you all.

We'll take the matter up under submission.

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C E R T I F I C A T E

I, Theresa E. Hallberg, Certified Shorthand Reporter, do hereby certify that the foregoing transcript is a true and correct transcript of my notes in said case to the best of my knowledge and ability.

SIGNED, OFFICIALLY SEALED, AND FILED WITH THE CLERK OF THE UNITED STATES DISTRICT COURT this ____ day of ______________, 2006.

S/ Theresa E. Hallberg
Theresa E. Hallberg, RMR,CRR